

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CARL BALL,)
)
Plaintiff)
)
v.) Case No: 4:10CV00601
)
DAVITA, ST LOUIS DIALYSIS)
CENTER,) **JURY TRIAL DEMANDED**
)
Defendant.)

NOTICE OF REMOVAL

Defendant Davita, St. Louis Dialysis Center, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, hereby removes this action, which has been pending as Cause No. 1022-CC01068 in the Circuit Court of the City of St. Louis, Missouri, to the United States District Court for the Eastern District of Missouri. As grounds for removal, Defendant states the following:

COMPLAINT

On March 3, 2010, Plaintiff Carl Ball filed his Original Petition ("Petition") in the Circuit Court of the City of St. Louis, Missouri. A copy of the Petition is attached as Exhibit A. Plaintiff alleges that on October 28, 2008, Defendant negligently caused him to fall from a scale, causing "injuries, including but not limited to a fractured and displaced elbow, resulting in surgical repair, along with pain and suffering that is permanent and progressive in nature." (see Ex. A at ¶8.) Plaintiff alleges further that he has "lost the ability to enjoy life," and has "incurred medical expenses, both past and future, the exact amount of which cannot be ascertained at this time." (*Id.*, ¶¶ 9, 10)

Plaintiff seeks judgment against Defendant "in an amount in excess of \$50,000.00." (*Id.*, prayer for damages)

BASIS FOR JURISDICTION IN THIS COURT

The basis for jurisdiction in this Court is diversity of citizenship under 28 U.S.C. § 1332(a).

A. Diversity of Citizenship Between Parties

- i. Plaintiff Carl Ball is a resident of the City of St. Louis, State of Missouri. (see Ex. A at ¶1)
- ii. The named Defendant is "Davita, St. Louis Dialysis Center." Plaintiff alleges, incorrectly, that the named Defendant "was a duly licensed Missouri corporation located in the City of St. Louis, Missouri, and owned and operated by a Dialysis Center located at 3610 [sic] Clark, in the City of St. Louis." (*Id.* at ¶2)
- iii. In fact, at all relevant times herein, the dialysis center involved, which is located at 2610 Clark (not "3610" as alleged in Plaintiff's Petition), was owned and operated by Renal Treatment Centers – Illinois, Inc. See Affidavit of Corinna Cherian attached hereto as Exhibit B at ¶3. "Davita, St. Louis Dialysis Center," is simply a d.b.a. for Renal Treatment Centers – Illinois, Inc. which is the proper Defendant.
- iv. Renal Treatment Centers – Illinois Inc. is diverse in citizenship with the Plaintiff, making removal to Federal Court appropriate. Specifically, Renal Treatment Centers – Illinois Inc. is a Delaware corporation with its principal place of business located at 601 Hawaii Street, El Segundo, California. (See Ex. B at ¶4). Renal Treatment

Centers – Illinois, Inc. has no corporate office within the State of Missouri. (See Ex. B at ¶5). It is deemed to be a citizen of both Delaware and California. See 28 U.S.C. § 1332(c)(1).

iv. Given the complete diversity between Plaintiff and Renal Treatment Centers – Illinois, Inc., jurisdiction is proper pursuant to 28 U.S.C. § 1332(a).

v. Pursuant to Rule 21 of the Federal Rules of Civil Procedure, on motion or on its own, this Court may, at any time, add or drop a party, or allow amendment to clarify identity. At this time, Defendant has no objection to the Court dropping “Davita, St. Louis Dialysis Center,” and adding in its place, the actual legal entity, Renal Treatment Centers – Illinois, Inc.

B. Amount in Controversy

i. The Petition seeks compensatory damages “in excess of \$50,000.00” for a fractured and displaced elbow, surgical repair, permanent/progressive pain and suffering, and past/future medical expenses. Although Defendant denies Plaintiff’s claim and allegations, the alleged amount in controversy is more than \$75,000.00, exclusive of interest and costs, due to the alleged seriousness and scope of medical injuries and expenses.

TIMELINESS OF REMOVAL

Defendant received a copy of the Petition on March 11, 2010. Accordingly, this Notice of Removal is timely filed within the thirty days allotted for removal by 28 U.S.C. § 1446(b).

PLEADINGS AND PROCESS

Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81-2.03, a copy of all process, pleadings, orders and other documents on file in the state court are attached as Exhibit C.

NOTICE GIVEN

Defendant will give written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d), and will file a copy of this Notice with the clerk of the Circuit Court of the City of St. Louis, Missouri as required by 28 U.S.C. § 1446(d).

WHEREFORE, pursuant to the above, Defendant respectfully requests that this cause be removed from the Circuit Court of the City of St. Louis, Missouri, that this Court exercise jurisdiction over this matter, that this Court drop DaVita, St. Louis Dialysis Center as defendant, and add Renal Treatment Centers – Illinois, Inc. as a defendant and that this Court grant any and all other appropriate relief.

Respectfully submitted,

BAKER STERCHI COWDEN & RICE LLC

/s/ Brent W. Baldwin

Brent Baldwin, #2553
BAKER STERCHI COWDEN & RICE, LLC
1010 Market Street, Suite 950
Saint Louis, MO 63101
Phone: (314) 231-2925
Fax: (314) 231-4857
E-mail: baldwin@bscr-law.com
Attorney for Defendant
DaVita, St. Louis Dialysis Center

CERTIFICATE OF SERVICE

I hereby certify that on this **9th** day of **April, 2010**, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all parties of record.

Thomas G. Kemper
BUTLER, KEMPER & WHITWORTH, LLC
Gateway One Building
701 Market Street, Suite 1375
St. Louis, MO 63101
Attorney for Plaintiff

/s/ Brent W. Baldwin